

Fair Finance Watch / Inner City Press

August 5, 2022

Board of Governors of the Federal Reserve System
Attn: Ann E. Misback Secretary, Jerome Powell, Governors
20th Street and Constitution Avenue NW
Washington, DC 20551

Office of the Comptroller of the Currency
Chief Counsel's Office
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Federal Deposit Insurance Corporation
James P. Sheesley Assistant Executive Secretary
550 17th Street NW Washington, DC 20429

RE: Fair Finance Watch / Inner City Press timely comments on Community Reinvestment Act Proposed Rulemaking [87 FR 33884] OCC: 12 CFR Part 25; Docket ID OCC-2022-0002; RIN 1557-AF15 Federal Reserve: 12 CFR Part 228; Regulation BB Docket No. R-1769; RIN 7100-AG29 FDIC: 12 CFR Part 345; RIN 3064-AF81

To Whom it May Concern:

On behalf of Inner City Press / Fair Finance Watch, this is a timely comment on the Community Reinvestment Act.

While below we address points from the joint proposal, since CRA is only enforcement on merger and expansion applications, the credibility and transparency of the agencies' enforcement of CRA on merger must be improved. to more fulsomely include review of fair lending laws, as well as CRA and negative impacts of recent mergers, from branch closings to raised prices to, yes, layoffs.

Preliminarily, the agencies should have made comments submitted available in (near) real time to the public, as was done even on the earlier ANPR. There was no reason, for example, to leave community groups in the dark over what banks and their trade associations are lobbying for.

The agencies currently do not sufficient consider "the probable effect of the transaction in meeting the convenience and needs of the community to be served." When the effect of a transaction includes further denuding lower income

Fair Finance Watch / Inner City Press
Lee@fairfinancewatch.org - Tel: 718-716-3540
Regular Mail: PO Box 580188, Bronx NY 10458

communities of branches, that is NOT meeting the convenience or needs of these communities.

The regulators are far too narrow. One recent example: Fair Finance Watch raised to the FRB and OCC that merger partner MUFG still does business in Russia amid its invasion of Ukraine. This is clearly risky (as well as immoral) and yet the Fed and OCC have not even asked MUFG or its proposed partner about it.

Also, employees are clearly "stakeholders" - yet the Federal Reserve had a footnote implying that no level of job loss is relevant to it in reviewing a merger. The CFPB should be consulted, as should legal data bases of discrimination cases. It must be made easier for the impacted public to comment, and to get copies of the regulators questions to the banks, and the banks answers.

The HHI understates the anticompetitive effects of recent mergers, with small banks being considered competitors to the Top Ten. More public comments, and more public hearings, are needed.

The agencies rubber stamp nearly all mergers. The bottom line is, some transactions should be denied. For example, when Investors Bank with its weak fair lending record got a conditional approval from the FDIC, it should have been a denial. The Federal Reserve absurdly allows Reserve Banks, which have no power to deny, to approve applications even by banks with rare Needs to Improve CRA ratings (Berkshire Bank).

As NCRC members, we join in NCRC's comments, including that CRA must explicitly consider bank activity by race and ethnicity. Although the CRA statute does not mention race, it required banks to serve all communities, which provides room for the federal bank agencies to incorporate race in CRA exams. Persistent racial disparities in lending should compel the agencies to incorporate race and ethnicity in CRA exams. A recent national level analysis showed continuing disparities in loan denials by race and when people of color receive home loans, their equity accumulation was less. (NCRC members should use this fair lending tool to report on disparities in their communities here). The agencies proposed to use the Home Mortgage Disclosure Act (HMDA) data to produce exam tables describing lending by race, but not to use the results of these analyses to influence a bank's rating.

While we believe the agencies can examine banks' record of lending to race, the agencies should at least bolster fair lending reviews accompanying CRA exams for

banks that perform poorly in the HMDA data analysis of lending by race. In addition, the agencies proposed using Section 1071 data on small business lending by race and gender of the business owner, and this data should be used as a screen for fair lending reviews.

By including race and ethnicity, CRA can identify and address persistent racial disparities that have direct impacts on quality of life and health outcomes. Public input mechanisms: agencies propose improvements that must be codified Since CRA requires banks to meet the needs of communities, the agencies must elevate the importance of public comments regarding the extent to which banks meet local needs. The agencies proposed to continue the current practice of sending any comments on CRA performance to banks and are also considering publishing comments received on agency websites. Posting comments on agency websites will establish accountability on the part of examiners to consider them. In addition, these comments can be referenced during future merger applications to determine if the banks addressed significant concerns of the public. Also, the agencies should establish a public registry that community organizations can use to sign up if they want to be contacted about community needs and bank CRA performance.

Furthermore, we request that the agencies start to publish which organizations they consult with to understand local community needs, commit to collecting input from a diverse range of organizations that includes organizations led by people of color and women, follow up on needs identified and detail how community input was factored into the results of CRA performance evaluations. We also agree with Acting Comptroller Hsu that the agencies must hold frequent public hearings on large bank mergers. CRA exams, if they are made more rigorous by a final rule, will help hold merging banks accountable. However, merging banks must also submit a community benefits plan as part of their merger applications which could include community benefits agreements negotiated with community organizations. As further described in recent comments we agree with NCRC that an outstanding CRA rating must not be considered evidence that merging banks have satisfied the public benefits legal requirement. Reducing CRA ratings inflation: progress on the lending test of the large bank exam, but not as much on the other subtests Currently, about 98% of banks pass their CRA exams on an annual basis with just less than 10% receiving an Outstanding rating and almost 90% of them receiving a rating of Satisfactory. This rating system is a joke.

Enhancements to community development definitions will increase responsiveness of banks to community needs. The agencies proposed refinements to the definitions of affordable housing, economic development, climate resiliency and remediation, community facilities and infrastructure that we believe will more effectively target revitalization activities to communities such as persistent poverty counties and Native American communities. The NPR clarified that financing health services qualifies under the definition of community support services. Essential community facilities now include hospitals and health centers without current documentation requirements, applied inconsistently, that the financing attract and retain residents to the community. This streamlining would boost financing of critical community infrastructure. However, the community development finance test will include an impact review which must be further developed and include points and ratings like other subtests so that the test can be even more effective in stimulating responsive community development activities.

Finally, we ask the agencies to reconsider their proposal to expand CRA consideration for financial literacy with no income limits; scarce counseling resources need to be targeted to LMI and other underserved populations. Data improvements will help hold banks accountable but all new data should be publicly available. The agencies correctly proposed to include new data collecting requirements for deposits, community development activities and automobile lending. Some of this data such as deposit and automobile lending would not be publicly available, which limits the extent to which the public can hold banks accountable for reaching underserved communities. We ask the agencies to reconsider this decision.

The agencies must improve their FOIA responsiveness and compliance, too.

If you have any questions, feel free to ask by email to lee@financewatch.org or call 718-716-3540.

Matthew R. Lee, Esq., Executive Director

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South Bronx, NY 10458 USA